

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
	:	
SYNCORA GUARANTEE INC., formerly known	:	
as XL CAPITAL ASSURANCE INC.,	:	
	:	Index No. 09 CV 3106 (PAC)
<i>Plaintiff,</i>	:	
	:	NOTICE OF PLAINTIFF'S
vs.	:	MOTION FOR PARTIAL
	:	SUMMARY JUDGMENT
EMC MORTGAGE CORPORATION,	:	
	:	
<i>Defendant.</i>	:	
-----	X	

PLEASE TAKE NOTICE that upon the annexed Declaration of Philip R. Forlenza and accompanying exhibits, the Memorandum of Law, the Appendix of Unreported Court Documents, the Statement of Material Facts under Local Civil Rule 56.1, and all other papers, pleadings, and proceedings had and filed herein, Plaintiff Syncora Guarantee Inc. (“Syncora”) will move this Court, before the Honorable Paul A. Crotty, in Courtroom 20C of the United States Courthouse, 500 Pearl Street, New York, New York, on a date to be determined by the Court, for an Order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting Syncora partial summary judgment against defendant EMC Mortgage Corporation (“EMC”) and declaring that: (1) The determination under the “repurchase provision” of whether a warranty breach “materially and adversely affects the value of the interests of [Syncora] in any of the HELOCs” or “adversely affects the interests of [Syncora]” is made as of the time of the breach of warranty (the closing date of the Transaction) and without regard to the subsequent performance of the loan, including whether the loan defaulted or whether the warranty breach caused the default; (2) To establish that EMC has materially breached the Insurance & Indemnity

Agreement, Syncora is required to show only that, on the closing date of the Transaction, EMC's breaches of transaction-level and loan-level warranties resulted in a material increase in Syncora's risk of loss within the coverage of the insurance contract, without regard to whether the breach caused Syncora's claim payments; and (3) This Court has the power in equity to award Syncora a remedy for material breach of the Insurance & Indemnity Agreement that is equivalent to rescission, in the form of claim payments less premiums.

Dated: October 26, 2011
New York, New York

Respectfully submitted,

PATTERSON BELKNAP WEBB & TYLER LLP

By: 

Philip R. Forlenza
Erik Haas
Matthew J. Shepherd
Anthony C. DeCinque
Jason R. Vitullo

1133 Avenue of the Americas
New York, NY 10036-6710
Telephone: (212) 336-2000
Fax: (212) 336-2222

Attorneys for Plaintiff

TO:

GREENBERG TRAURIG, LLP
Attorneys for Defendant EMC Mortgage Corp.
200 Park Avenue
New York, NY 10166
Att'n: Richard A. Edlin, Esq.
(212) 801-9200

KELLEY DRYE & WARREN LLP
Attorneys for Defendant EMC Mortgage Corp.
101 Park Avenue
New York, NY 10178
Att'n: John M. Callagy, Esq.
(212) 808-7800

SULLIVAN & CROMWELL LLP
Attorneys for Defendant EMC Mortgage Corp.
1888 Century Park East
Los Angeles, California 90067
Att'n: Robert A. Sacks
(310) 712-6640